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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,003	01/18/2002	Patrick C. Marks	9319	7774

7590 05/23/2003
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EXAMINER

NGUYEN, TU MINH

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 05/23/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/051,003

Applicant(s)
Marks et al.

Examiner
Tu M. Nguyen

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3748



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 19, 2003
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 4, and 7-12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 7, and 9 is/are rejected.
- 7) ☒ Claim(s) 4, 8, and 10-12 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jan 18, 2002 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

1. An Applicant's Amendment filed on May 19, 2003 has been entered.

Claims 1, 2, 5, and 6 have been canceled; and claims 3, 7, and 9 have been amended.

Overall, claims 3, 4, and 7-12 are pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless --

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 3, 7, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Jessberger (U.S. Patent 6,494,290).

Re claim 3, as shown in Figures 2 and 3, in a system having a multi-speed engine with an air inlet line (1) connected to the engine, Jessberger discloses a Helmholtz resonator structure comprising:

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- a closed chamber (9) configured as a single dead end side branch connected to the inlet line and defining a Helmholtz resonator continuously operatively connected to the inlet line via a restricted connection (7); and

- means (10) for attenuating noise in a plurality of frequencies by changing the frequency response of the Helmholtz resonator responsive to changes in speed of the engine (also see Figures 5 and 6);

wherein the means for changing the frequency response includes at least one restricted connection (7) which is selectively connected between the chamber and the inlet line (connection (7) is selectively opened or closed (lines 8-15 of column 3)).

Re claim 7, as shown in Figures 2 and 3, Jessberger discloses a system having a multi-speed engine with an inlet line (1) connected to the engine, microprocessor means (not shown but inherently must have) for controlling the speed of the engine, the improvement comprising:

- a closed chamber (9) configured as a single dead end side branch connected to the inlet line and defining a Helmholtz resonator continuously operatively connected to the inlet line via a restricted connection (7); and

- means (10) for attenuating noise in a plurality of frequencies by changing the frequency response of the Helmholtz resonator responsive to changes in speed of the engine (also see Figures 5 and 6);

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wherein the means for changing the frequency response includes at least one restricted connection (7) which is selectively connected between the chamber and the inlet line (connection (7) is selectively opened or closed (lines 8-15 of column 3)).

With regard to the preamble directed to "a refrigeration system", a preamble to a claim is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self contained description of the structure not depending for completeness upon the introductory clause. See *Kropa v. Robie*, *supra* at 480. See also *Ex parte Mott*, 190 USPQ 311, 313 (PTO Bd. of App. 1975). Clearly, the pending base claim 7 does not rely on the preamble for completeness.

Re claim 9, as shown in Figures 2 and 3, Jessberger discloses a system having a multi-speed engine with an inlet line (1) connected to the engine, microprocessor means (not shown but inherently must have) for controlling the speed of the engine, the improvement comprising:

- a closed chamber (9) configured as a single dead end side branch connected to the inlet line and defining a Helmholtz resonator continuously operatively connected to the inlet line via a restricted connection (7); and

- means (10) for attenuating noise in a plurality of frequencies by changing the frequency response of the Helmholtz resonator responsive to changes in speed of the engine (also see Figures 5 and 6);

wherein the means for changing the frequency includes a valve (10) having only an open and a closed position.

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With regard to the preamble directed to “a refrigeration system”, a preamble to a claim is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self contained description of the structure not depending for completeness upon the introductory clause. See *Kropa v. Robie, supra at 480*. See also *Ex parte Mott*, 190 USPQ 311, 313 (PTO Bd. of App. 1975). Clearly, the pending base claim 9 does not rely on the preamble for completeness.

Allowable Subject Matter

4. Claims 4, 8, and 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to the reference of Jessberger have been fully considered but they are not persuasive.

In response to applicant's argument that Jessberger fails to disclose “a closed chamber ... defining a Helmholtz resonator continuously operatively connected to the inlet line via a restricted connection” (page 4 of Applicant's Amendment), the examiner respectfully disagrees. The phrase “continuous” is defined as “marked by uninterrupted extension in space, time, or sequence”.

Thus, in a view point of time (emphasis added), as shown in Figure 2, the closed chamber (9) in

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Jessberger defines a Helmholtz resonator which is continuously operatively connected to the inlet line (1) via a restricted connection (7) to reduce noise in the engine at all times (or for an uninterrupted extension of time), regardless if the connection (7) is opened or closed. Claims in a pending application are given their broadest reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974). Thus, in the broadest reasonable interpretation of the base claims, Jessberger clearly discloses the claimed invention.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., plural restricted connections with one always providing a connection) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (703) 308-2833.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (703) 308-2623. The fax phone number for this group is (703) 872-9302. For After Final communication, the fax phone number is (703) 872-9303.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Tu M. Nguyen

TMN

Tu M. Nguyen

May 21, 2003

Patent Examiner

Art Unit 3748

Thomas Denion
THOMAS DENION
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